

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JOAN BARNES, next friend and mother of)
JANA ELHIFNY, JANA ELHIFNY)
individually,)

03:04-CV-0583-LRH (PAL)

Plaintiff,)

ORDER

vs.)

CINDA GIFFORD, et al.,)

Defendant.)
_____)

Presently before this court are two stipulations and proposed orders (##133 & 135). The first stipulation concerns the parties' request for an interlocutory appeal and a stay of certain proceedings during the duration of the appeal. (#133). The second stipulation notes the parties' agreement that a minor modification to the court's previous order granting in part and denying in part a motion to amend the complaint (#130) is warranted. (#135).

The stipulation regarding the motion to modify notes that the briefing on the motion to amend inadvertently omitted an opposition to allowing the second claim for relief based upon a subsuming argument. Both parties agree that the court's analysis of the subsuming issue should have barred the second claim for relief. The court has reviewed the prior motions and its order and agrees. As such, the court's prior order (#130) is amended to deny the motion to amend as it relates to the second claim for relief.

The stipulation regarding the request for an interlocutory appeal notes that the parties agree that a controlling question of law as to which there is substantial ground for difference of

1 opinion exists in this matter and that an immediate appeal from the order may materially advance
2 the ultimate termination of the litigation. As such, the parties request the court provide them the
3 opportunity to file an interlocutory appeal of the order relating to the motion to modify (#130).
4 The court has reviewed its prior order and concludes that the subsuming question is, in fact, “a
5 controlling question of law as to which there is substantial ground for difference of opinion” and
6 that “an immediate appeal from the order may materially advance the ultimate termination of the
7 litigation.” 28 U.S.C. § 1292(d). The court, therefore, sees no harm in allowing the parties to
8 attempt an interlocutory appeal.

9 Should the Ninth Circuit Court of Appeals exercise its discretion to hear the parties’
10 interlocutory appeal the following stipulated terms shall apply to the discovery process in this
11 matter:

12 (1) Discovery Cutoff Date: Discovery shall be extended and shall be completed by May
13 30, 2008.

14 (2) Fed. R. Civ. P. 26(a)(2) Disclosures (Experts): Disclosures concerning experts shall
15 be made on March 3, 2008. Disclosures respecting rebuttal reports shall be made within 30 days
16 after the initial disclosure of experts.

17 (3) Expert Discovery Cutoff Date: Discovery regarding experts shall be completed by
18 May 30, 2008.

19 (4) Motions: The date for filing dispositive motions, as well as any motion (pretrial or
20 otherwise) that does not relate to discovery, shall be stayed pending the interlocutory appeal of
21 the court’s June 2007 Order.

22 (5) Pretrial Order: The date for filing the Parties’ joint pretrial order shall be stayed
23 pending the interlocutory appeal of the court’s June 2007 Order.

24 Any modifications to the dates set forth herein must be agreed to by both parties in
25 writing before being presented to the court for its approval. Either party may move the court for
26 relief from the stay imposed by this Order upon first giving the other party 10 days notice of its
27 intent to do so.

28 However, in the event that the Ninth Circuit Court of Appeals declines, in its discretion,

1 to permit an appeal to be taken from the court's prior order, the parties shall meet and confer in
2 good faith to negotiate a scheduling order in which discovery shall be extended for 120 days
3 from the date of the Ninth Circuit's formal denial of the appeal.

4 It is therefore ORDERED that Defendants' Motion for Partial Reconsideration of Order
5 Granting in Part and Denying in Part Plaintiff's Motion for Leave to File First Amended
6 Complaint (##131 & 135) is GRANTED;

7 It is further ORDERED that the court adopts the parties' stipulated request (#133) to file
8 an interlocutory appeal of the court's order granting in part and denying in part Plaintiff's Motion
9 for Leave to File First Amended Complaint (#130) as discussed above.

10 DATED this 11th day of July, 2007.

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14 LARRY R. HICKS
15 UNITED STATES DISTRICT JUDGE
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